



DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 543

[BOP-1180-I]

RIN 1120-AB80

Federal Tort Claims Act – Technical Changes

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) makes minor revisions to our regulations regarding the Federal Tort Claims Act that clarify requirements for presenting claims and correct obsolete and/or incorrect references to Bureau offices.

DATES: This rule is effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*]. Electronic comments must be submitted, and written comments must be postmarked, no later than 11:59 pm on [*INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Please submit electronic comments through the regulations.gov website, or mail written comments to the Legislative & Correctional Issues Branch, Office of General Counsel, Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel, Federal Bureau of Prisons, at the address above or at (202) 353-4885.

SUPPLEMENTARY INFORMATION:

Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING

INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted www.regulations.gov.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

I. Discussion

In this document, the Bureau makes minor revisions to regulations in 28 CFR part 543, subpart C – Federal Tort Claims Act that clarify requirements for presenting claims and correct obsolete and/or incorrect references to Bureau offices. Each of these minor changes is discussed below.

Where to present the claim. The Bureau revises section 543.31, paragraph (c), to delete extraneous language and language indicating that if a loss or injury occurs in a training center, claimants may forward claims to the Associate General Counsel, Federal Law Enforcement Training Center. This inaccurately identifies the appropriate office designated to receive claims involving Bureau training centers. Claims are now accepted and processed at the appropriate Bureau Regional Counsel office for the region in which the training center is located.

Deletion of “a training center.” Also in section 543.32, Processing the claim, the Bureau deletes the phrase “a training center” in paragraph (b). This paragraph indicates that if a claim is submitted to the incorrect office, the claimant will be notified that the claim was transferred to the appropriate office. The appropriate office may be another BOP office or another Federal agency. It will no longer refer to a training center, however, because such claims will no longer be processed there (see discussion above on “where to present the claim”).

Requests for additional information during investigations of claims. The Bureau deletes “rejection or” in the last sentence of section 543.32(c) to clarify that, after a claim has been properly presented and an investigation initiated, if a claimant fails to provide requested information, the claim may be denied.

Specificity of office designation. In paragraph (d) of section 543.32, regarding the offices with authority to deny or propose settlement of a claim, the Bureau clarifies that the Associate General Counsel, Litigation Branch, in the Office of General Counsel will investigate and propose settlement, and that if the proposed settlement exceeds the authority granted to the Bureau of Prisons (not authority granted to the Office of General Counsel), the General Counsel will seek Department of Justice approval.

No consideration of appreciation/depreciation. Finally, the Bureau deletes paragraph (f) of section 543.32, regarding the consideration of appreciation or depreciation of lost or damaged property during settlement of a claim. The Bureau deletes this paragraph because the former Department of Justice policy that required consideration of appreciation or depreciation, Policy Statement 2110.23C (Filing And Settlement Of Claims Of Civilian Personnel For Damages To Or Loss Of Personal Property Incident To Service), was replaced with 1400.05 (Claims for Damage to, or Loss of, Personal Property), which does not allow for the use of appreciation/depreciation to determine the value of lost or damaged property. The Bureau also adjusts the designation of the paragraphs that follow to account for this deletion.

II. Regulatory Analyses

Administrative Procedure Act.

“Unless a statutory exception applies, the APA requires agencies to publish a notice of proposed rulemaking in the Federal Register before promulgating a rule that has legal force.” Little Sisters of the Poor Sts. Peter & Paul Home v. Pennsylvania, 591 U.S. ---, 140 S. Ct. 2367, 2384 (2020). The Administrative Procedure Act (5 U.S.C. sec. 553(b)(3)(B)) allows exceptions to notice-and-comment rulemaking “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Further, sec. 553(d) provides an exception to the usual requirement of a delayed effective date when an agency finds “good cause” that the rule be made immediately effective.

An agency may claim notice and comment is “unnecessary” where the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and public. Mack Trucks, Inc. v. EPA, 682 F.3d 87, 94 (D.C. Cir. 2012); Util. Solid Waste Activities Grp. v. EPA, 236 F.3d 749, 754–55 (D.C. Cir. 2001). Unlike previous Bureau interim rules courts have addressed, this Interim Rule is by its nature non-substantive, functioning only as updated step-by-step guidance for how individuals, including current and former inmates, can present administrative tort claims. Cf. Paulsen v. Daniels, 413 F.3d 999 (9th Cir. 2005) (holding the Bureau violated the APA by issuing an interim rule that had “the effect . . . [of] deny[ing] program eligibility to certain categories of inmates . . .”).

This rulemaking is exempt from normal notice-and-comment procedures because advance notice and public comment in this instance are unnecessary. The change to this regulation is non-substantive, minor, routine, insignificant, and made only to clarify Federal Tort Claims Act processing. This rulemaking makes no change to any rights or responsibilities of the agency or any regulated entities. Instead, this rulemaking seeks to promptly clarify legal procedures primarily for the benefit of individuals, including current and former federal inmates, who present administrative tort claims against the Bureau. For the same reasons, the Bureau

finds that “good cause” exists to make this rule effective upon publication. Nevertheless, the Bureau invites public comment on this Interim Rule.

Executive Orders 12866 and 13563. This rule does not fall within a category of actions that the Office of Management and Budget (OMB) has determined constitutes a “significant regulatory action” under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. The economic impact of this proposed rule is limited to inmates in the custody of the Federal Bureau of Prisons.

Executive Order 13132. This rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, the Bureau determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act. The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this rule and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau’s appropriated funds.

Unfunded Mandates Reform Act of 1995. This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act. This rule is a not major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant

adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 543

Prisoners.

Colette S. Peters,
Director,
Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96, the Bureau revises 28 CFR part 543 as follows.

PART 543 – LEGAL MATTERS

1. The authority citation for 28 CFR part 543 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082

(Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to Offenses committed after that date), 5039; 28 U.S.C. 509, 510, 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

Subpart C - Federal Tort Claims Act

2. Revise paragraph (c) of § 543.31 to read as follows:

§ 543.31 Presenting a claim.

* * *

(c) *Presenting a claim.* You may either mail or deliver the claim to the regional office in the region where the loss or injury occurred. If the loss or injury occurred in the Central Office, you may either mail or deliver the claim to the Office of General Counsel, Central Office. A list of addresses for all the Bureau institutions and offices can be found at www.bop.gov.

3. Revise paragraphs (a) through (d) and (f) of § 543.32 to read as follows:

§ 543.32 Processing the claim.

(a) *Receipt of acknowledgment letters.* If you have presented a claim signed by you or a duly authorized agent or legal representative that provides all the necessary information (such as time, date, and place where the incident occurred, and a specific sum of money you are requesting as damages), you will receive an acknowledgment letter indicating the presentment date and a claim number. If your submission is unsigned, or signed by a person without legal authority to present the claim on your behalf, or you fail to provide all necessary information, your submission will be rejected and returned to you for resubmission. The presentment date is the date your submission containing all required signatures and necessary information is first received by either the Department of Justice or an office of the Bureau of Prisons. You should refer to your claim number in all further correspondence with the agency. Additionally, you must inform the agency of any changes in your address.

(b) *Transfer of claims.* If your claim is improperly submitted to the wrong office or agency, you will be notified by the responsible office that your claim was transferred to another regional office, the Central Office, or another agency.

(c) *Investigation.* The regional office ordinarily refers the claim to the appropriate institution or office for investigation. You may also be required to provide additional information during the investigation. Your failure to respond within a reasonable time may result in the denial of the claim.

(d) *Administrative claim decisionmaker.* The Regional Counsel or his or her designee reviews the investigation and the supporting evidence and renders a decision on all claims properly presented to the regional office and within regional settlement authority. The Regional Counsel has limited settlement authority (up to an amount established by the Director of the Bureau of Prisons). After considering the merits of the claim, the Regional Counsel may deny or propose a settlement of the claim. The Associate General Counsel, Litigation Branch, will investigate and propose settlement for all claims properly presented in the Central Office in

accordance with delegated settlement authority. If the proposed settlement exceeds the Bureau of Prisons' authority, the General Counsel will seek approval from the appropriate Department of Justice officers.

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(f) *Options if claim is denied or settlement offer is unsatisfactory.* If your claim is denied or you are dissatisfied with a settlement offer, you may request in writing that the Bureau of Prisons reconsider your claim in the administrative stage. You should include additional evidence of injury or loss to support your request for reconsideration. If you are dissatisfied with the final agency action, you may file suit in an appropriate United States District Court, as no further administrative action is available.

(g) *Acceptance of settlement.* If you accept a settlement, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

(h) *Response timeline.* Generally, you will receive a decision regarding your claim within six months of when you properly present the claim. If you have not received a letter either proposing a settlement or denying your claim within six months after the date your claim was presented, you may assume your claim is denied. You may then proceed to file a lawsuit in the appropriate United States District Court.

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